

REMARKS

In response to the Restriction Requirement dated May 18, 2006, Applicants have elected with traverse, Group I, claims 1, 3, 4, 8 and 15, directed to isolated polynucleotides, oligonucleotides that hybridize thereto, and kits comprising same. Applicants further elect the polynucleotide species SEQ ID NO: 52 for examination at this time.

Applicants elect with traverse. Applicants respectfully request that the Examiner consider examining claims directed to SEQ ID NOs: 74, 83 and 154 as well as SEQ ID NO: 52 in a single application.

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP Section 802.01 Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 – Section 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP Section 803.02 Section 806.04(a) - Section 806.04(i), Section 808.01(a), and Section 808.02).

The polynucleotides of SEQ ID NOs: 74, 83 and 154 and SEQ ID NO: 52 are related one to the other in that each of these polynucleotides correspond to different regions of the same breast tumor antigen, referred to as B854P. Thus, a search directed to one of these polynucleotides will necessarily identify art related to the other polynucleotide. Accordingly, Applicants submit that it would not be an undue burden on the Examiner to simultaneously search the art related to SEQ ID NO: 52 and SEQ ID NOs: 74, 83 and 154 and, therefore, respectfully request that claims of Group I directed to polynucleotides of SEQ ID NO: 52 and SEQ ID NOs: 74, 83 and 154 be combined in a single application in accordance with the requirements of 35 U.S.C. § 121 and 37 C.F.R. § 1.141.

Additionally, Applicants respectfully traverse the Examiner's objection to claims 9-13 and 17 as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. Applicants respectfully note that "A Markush-type claim recites alternatives in a format such as "selected from the group consisting of A, B and C"


(emphasis added) (MPEP 803.02). As such, Applicants submit that claims 9-13 and 17 do in fact refer to other claims in the alternative. Applicants respectfully request that the Examiner include claim 11 in Group I claims for examination at this time.

Applicants have amended claims 1, 8 and 11 solely to remove recitation of non-elected subject matter. Non-elected claims 2, 5-7, 9-10, 12-14, and 16-17 have been canceled. The above amendments are not to be construed as acquiescence with regard to the Examiner's rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Applicants submit that claims 1, 3, 4, 8, 11, and 15 read on the elected subject matter. Consideration of the elected claims is now requested.

Applicants respectfully submit that all of the claims remaining in the application are now believed to be in condition for allowance. Favorable consideration and a Notice of Allowance are earnestly solicited.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,  
Seed Intellectual Property Law Group PLLC

  
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Julie A. Urvater, Ph.D., Patent Agent  
Registration No. 50,461

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701 Fifth Avenue, Suite 6300  
Seattle, Washington 98104-7092  
Phone: (206) 622-4900  
Fax: (206) 682-6031  
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